

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN THE MATTER OF: ) Case No: B-11-80667 C-13D  
**CLARENCE LYON,** )  
                          )  
                          )  
Debtor(s)             )  
                          )  
\_\_\_\_\_)

MOTION BY STANDING TRUSTEE TO DISALLOW ATTORNEY'S FEE

NOW COMES Richard M. Hutson, II, Standing Trustee ("Trustee") and respectfully moves the Court, pursuant to 11 U.S.C. §§329(b) and 330 for an order as follows:

1. The Debtor filed a petition under Title 11 of the United States Code, Chapter 13, on April 21, 2011, in the United States Bankruptcy Court for the Middle District of North Carolina ("the Petition Date").
2. On April 21, 2011, Richard M. Hutson, II, was appointed as Trustee.
3. This Court has proper and personal jurisdiction of the subject matter hereof and over the parties pursuant to 28 U.S.C. §§151, 157 and 1334, and Local Rule 83.11 of the United States District Court for the Middle District of North Carolina.
4. The Debtor, through counsel, has failed to file a plan or schedules in this case.
5. Timothy Peterkin, counsel for the Debtor, has requested the presumptive attorney fee of \$3,000.00 for representing the Debtor in this case. Of this amount, the Debtor paid \$0.00 prior to the Petition Date, which leaves approximately \$3,000.00 to be paid to Mr. Peterkin through the Chapter 13 plan.
6. Section 329(b) provides that the Court may cancel any agreement for attorney fees that exceeds the reasonable value of the services provided.
7. Upon information and belief, Mr. Peterkin's services to the Debtor do not warrant payment in full of the presumptive fee in this case. Mr. Peterkin did not attend the scheduled meeting of creditors on June 3, 2011. Mr. Peterkin has failed to file a plan and schedules in this case. Mr. Peterkin has been non-responsive to the Court, the Trustee and the Debtor in proceeding forward with this case.

WHEREFORE, the Trustee prays the Court for an Order as follows:

1. That the unpaid balance of Mr. Peterkin's requested fees in the amount of \$3,000.00 be disallowed entirely; or
2. For such other and further relief as the Court may deem just or proper.

This the 7<sup>th</sup> day of June, 2011.

s/Benjamin E. Lovell  
Benjamin E. Lovell  
Attorney for the Trustee  
State Bar No: 23266  
P.O. Box 3613  
Durham, N.C. 27702

#### **CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that I have this day served a copy of the foregoing document upon Timothy Jay Peterkin, Esq., Post Office Box 1427, Knightdale, NC 27545-1427; Clarence Lyon, 233 Shalimar Drive, Durham, NC 27713; Michael D. West, Esq., US Bankruptcy Administrator, Post Office Box 1828, Greensboro, NC 27402 by depositing the same, enclosed in a postpaid wrapper, properly addressed to the following parties in interest, at their last known addresses as shown below, in a post office or official depository under the exclusive care and custody of the United States Postal Service:

This the 7<sup>th</sup> day of June, 2011.

s/Benjamin E. Lovell  
Benjamin E. Lovell  
Attorney for the Trustee